IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Crl.MC.No. 3726 of 2007

(S.T. NO.1245/2006 OF CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA)

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PETITIONER/ ACCUSED:

SIVARAMAN.P.T.,
THENGINAL HOUSE,
AICKADU, KODUMON,
PATHANAMTHITTA.

BY ADV. SRI.K.RAVEENDRAN,
ADV. SMT.C.A.SEENA.

RESPONDENTS/ COUNTER PETITIONER:

1. **STATE OF KERALA,**
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. **SURESH KUMAR.S.,**
   USHA BHAVAN, MYLAPRA.P.O.,
   PATHANAMTHITTA.

BY PUBLIC PROSECUTOR SRI. RAVEENDRA BABU.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 13/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3726 of 2007

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Dated this the 13th day of December, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the N.I. Act. Cognizance was taken by the learned Magistrate in 2006. The petitioner had entered appearance also. He was enlarged on bail. But when the case was posted to 4.8.2007, the petitioner could not appear on account of his illness. Thereupon a warrant of arrest was issued against the petitioner. The petitioner finds such warrant of arrest issued by the learned Magistrate chasing him.

2. According to the petitioner he is absolutely innocent. His absence was not willful or deliberate, but on account of reasons beyond his control. He is a responsible government servant. He is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is in these

circumstances prayed that appropriate directions may be issued to release the petitioner on bail on the date of surrender itself.

3. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Sessions Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstances of this case, there shall be a direction that the warrant of arrest issued against the petitioner shall not be executed till 24.12.2007. On or before that date, the petitioner shall appear before the learned Magistrate and seek regular bail.

(R. BASANT)
Judge

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